pal case. As blasting is a useful and often a necessary means for the improvement of land, it would seem better to hold that where it does not amount to a nuisance a defendant should be answerable only if negligent. This position, moreover, is not without authority. *Klepsel* v. *Donald*, 4 Wash. 636.

FOREIGN MARRIAGES — TITLE TO PERSONALTY. — After years of litigation in the English courts, the De Nichols will at last has been set aside. This will, which disposed of a personal estate obtained during a long period of English domicil, was disputed by the testator's widow on the ground that, since the marriage had been contracted at the time of their French domicil, by the French law of community of goods she was entitled to one half the personalty later acquired, though there had been no express marriage settlement. Her right was recognized by the Divisional Court, but the Court of Appeal held that the law of the domicil at the time of death gave the husband title to all the personalty. In the House of Lords this decision has now been reversed and the wife declared entitled to one half the personalty on the ground that since the parties contemplated a French marriage, they must be supposed to contract that their marital rights not only to existing property, but to all future acquisitions wherever they may be domiciled, shall be determined by the law governing the marriage. *De Nichols* v. *Curlier*, [1900] App. Cas. 21. In this country, on the other hand, this precise question as early as 1827 was decided the other way. *Saul's Heirs* v. *His Executors*, 3 Mart. N. S. 569. This view has been followed consistently. *Muus* v. *Muus*, 29 Minn. 115; *Long* v. *Hess*, 154 Ill. 482.

The greater frequency of marriage settlements in European countries than in our own doubtless accounts for this desire of the courts to supply them, when omitted, on what seems to them grounds of obvious justice to a defrauded spouse. Is it not, however, as likely that on change of domicil the parties, in the absence of express agreement, wished to submit all their rights to the law of their new home? This implication of a contract certainly is not in line with any general principle as to the acquisition of property. But two views of the law governing title to personalty have ever been maintained: the law of the domicil of the claimant, and the law of the *situs* of the property. *Green* v. *Van Buskirk*, 7 Wall. 139; *Re Queensland Co.*, [1891] 1 Ch. 536. In the principal case both these tests would concur to fix on the law of England to determine the rights of the wife. Nor is there any peculiarity in the law of family relations that would lead to this departure. The right of a husband to the society of his wife is governed by the law of the place where they are residing. Dicey, Conflict of Laws, 490. Before making an exception to these rules, one may fairly ask for more conclusive reasons than a view of abstract justice, which is at least doubtful.

But even granting the propriety of implying a contract, it should not have been decisive here. The exact question considered in the Divisional Court was; what interest had the plaintiff in the property at the time of the testator's death? In France, the wife would get title to one half the personalty from the moment of acquisition by force of positive law. An English marriage settlement, however, would give the wife no vested legal estate in her husband's personalty. It would be a mere

equity enforcible only through the courts. So this implied contract, wherever made, could not vest title in the wife to personalty acquired by the husband by force of the law of England, but would give merely an equitable claim against his estate.

COMPANY PROMOTERS ARE FIDUCIARIES. — It is common in the commercial world for an owner of property who desires to sell to take an active part in forming a company to purchase his interests. And it usually happens that the promoter himself is made a director of the new company or selects the board. The law makes no attempt to prevent such a sale of property, recognizing that the individual promoter-vendor and the corporate vendee are distinct persons. But in a court of equity the action of the promoter is closely scrutinized, since in the nature of things his interests as vendor and as one of the vendees may clash. The relation between him and the company is therefore regarded as fiduciary. *Erlanger* v. *Sombrero Phosphate Co.*, 3 App. Cas. 1218. And this was deemed so important that Lord Cairns thought it incumbent on such organizer to provide his company with an independent board of directors whose action might be free and intelligent. It seems unnecessary, however, in all cases to go so far as in *Salomon* v. *Salomon*, [1897] App. Cas. 22, where all the shareholders knew and approved the terms of sale. There, as the number of shareholders was strictly limited, it was held that the directors might bind the company by a contract with themselves as promoters. See Alger Promoters, p. 28. These exceptional cases, however, seem not to have introduced principles inconsistent with *Erlanger's* case. The importance of the fiduciary obligation on the vendor towards the company still remains.

The case of *Lagunas Nitrate Company* v. *Lagunas Syndicate*, [1899] 2 Ch. 392, therefore seems strangely lenient in this regard. A syndicate owning certain nitrate works formed a company to purchase the property. The board of directors of the two organizations was identical. These facts were noted in the articles of association, but received mere mention in the prospectus given to the public. Yet the court held that the interest of the syndicate was sufficiently disclosed, and the company was not entitled on that ground to rescission of the contract. Strictly speaking, such notice may meet all the technical requirements. One who reads the prospectus knows the facts, and need not purchase unless he chooses. But when one buys without seeing the prospectus he is to be regarded as having constructive if not actual knowledge of the conditions. To allow a fiduciary relation to be satisfied by the fiction of constructive notice, however, seems to go far toward denying its essential feature. In practice the investing public buy shares without seeing the prospectus, or regard it as a document in which it is entirely possible to state facts in such manner as to dull their real significance. If then the principal case is followed, and mere statements of the prospectus be sufficient, in every case there must be a perplexing question as to whether the words really convey the meaning clearly, for if they do not the purchaser is not warned, and the promoter has accordingly failed in his duty. On the whole it seems better to insist upon a more stringent rule with reference to the promoter-vendor's duty than the principal case demands.